

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION
OF NEW HAMPSHIRE, INC.

v.

COUNTY COMMISSIONERS,
BELKNAP COUNTY, NEW HAMPSHIRE

CASE NO. S-0341

DECISION NO. 79036

APPEARANCES

Representing the State Employees' Association of New Hampshire, Inc.:

Richard E. Molan, Esquire, Asst. Exec. Dir.

Representing the Belknap County Commissioners:

Roger Burlingame, Esquire, Counsel

BACKGROUND

This decision arises from a rehearing requested by the respondent county commissioners. In Decision No. 79005, this Board found certain items to be negotiable and ordered negotiations on them. Specifically, in its finding No. 5 in that decision the Board said:

"The subjects of promotion, transfer, lay-off, seniority, discipline and involuntary separation are properly the subjects of negotiations between the parties. By this finding and declaration the Board does not imply that the public employer must surrender his managerial rights finally conveyed to him under the statute."

The county commissioners objected to this finding among others for various reasons. A rehearing was granted by the Board and in fact took place at the Board offices in Concord on October 31, 1979.

At the hearing, the parties agreed that the issues had been narrowed so that the hearing would concern only the matter of lay-off and involuntary separation. Neither party waived any of its rights by narrowing said issues.

Belknap County commissioners argued at the hearing that RSA 273-A:1 XI defines "terms and conditions of employment" to include those items "other than managerial policy within the exclusive prerogative of the public employer or confided exclusively to the public employer by statute or regulations adopted pursuant to statute." The employer then argued that RSA 28:10-a defines the terms and conditions under which employees can be discharged and RSA 104:27 when read with other sections of RSA 104 governs the conditions of hiring and firing deputy sheriffs. Because these statutes regulate lay-off of the employees

in the bargaining unit (being employees of Belknap County institutions and the Sheriff's Department as further defined in the certification of bargaining unit), the employer argued that management had been granted certain rights by statute which could not be negotiated under RSA 273-A.

FINDINGS OF FACT
AND RULINGS OF LAW

The issues in this case are limited to an interpretation of RSA 273-A when read with RSA 28:10-a and RSA 104:27. The question is whether those statutes prohibit negotiations concerning the procedures to be followed in terminating employees of Belknap County or whether such procedures can be negotiated notwithstanding the provisions of those statutes.

Turning first to RSA 28:10-a, this statute states that:

"Any employee of a county institution who has served at least one year shall not be discharged or removed from employment except for dishonesty ... (etc.) ... Prior to the discharge or removal of any such employee a statement of the grounds and reasons therefor shall be prepared by the county commissioners and signed by a majority of the Board and notice thereof shall be given to said employee not less than 10 days nor more than 30 days prior to the effective date of such discharge or removal ..."

This statute does not appear to the Board to give the employer any rights. What it does is defines the reasons that employees who have served for one year or more can be terminated and give certain minimum procedures for that termination. It does, in fact, provide certain basic job security for those county employees. This statute appears to have added to the rights of employees, not to the rights of employers.

It is a duty of this Board to read state statutes together so as to make sense and, if possible, to be consistent and not contradictory. This Board believes that the provisions requiring negotiations in RSA 273-A:3 can be read with the provisions of RSA 28:10-a consistently. The county commissioners and employee organization cannot negotiate a contract which deprives employees of the minimum rights granted in RSA 28:10-a. However, procedures and further definitions of the terms provided in that statute can be negotiated. It is the opinion of the Board that management retains as part of its managerial discretion the right to terminate employees for the reasons given in the statute and as limited by the statute and they cannot be required to bargain a further limitation on those reasons. To repeat, however, the procedures relating to termination are negotiable notwithstanding the terms of RSA 28:10-a.

Turning to the deputy sheriffs, the scheme of RSA 104 clearly contemplates that deputy sheriffs are employees of the sheriff of the county. The sheriff is liable for their actions, has the right to appoint them following certain simple procedures and has the right under RSA 104:27 to discharge them "by writing under his hand and seal, which shall be served by another deputy by reading the same or giving an attested copy thereof to the deputy so discharged ..."

It is argued by the county that this gives management certain rights. The Board agrees that the sheriff has the right to terminate a deputy with or without cause and there appears to be nothing in the statute requiring cause.

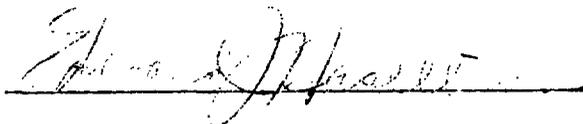
Notwithstanding the above, the Board does not read the provisions of RSA 104:27 so restrictively as to deny to this group of employees (deputy sheriffs) their rights under RSA 273-A. The sheriff cannot be required to bargain over reasons for termination but the procedures for termination (order of termination due to budgetary cut back and similar matters) are negotiable. It is not permissible, however, to require the employer to negotiate concerning reasons for termination since the statutory scheme clearly contemplates that the sheriff shall have the right to employ those deputies whom he sees fit. The Board will not read the language regarding the service of termination notice of foreclose negotiations on other termination procedures.

In conclusion, the Board does not feel that the statutes cited by management clearly prohibit negotiations or grant to management rights that prohibit bargaining concerning procedures of layoff and termination. The Board would note that it is the procedures concerning the items listed in its finding No. 5 of the original order which were found to be negotiable, not the ultimate decisions which are, to a great degree, covered by the scope of management discretion and that the negotiation of these procedures is contemplated under the statute where a statutory merit system does not exist.

ORDER

The Board issues the following order:

The parties are required to negotiate concerning procedures for lay-off and termination consistent with this order.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 13th day of November, 1979.

Chairman Edward Haseltine presiding. Members Cummings and Moriarty present and voting. All concurred. Director Evelyn LeBrun and Board Counsel Bradford Cook also present.